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August 1, 2009

Division of Global Migration and Quarantine
Centers for Disease Control and Prevention
U.S. Department of Health and Human Services
Attn: Part 34 NPRM Comments
1600 Clifton Road, NE, MS E-03
Atlanta, GA 30333

Re: Docket # CDC-2008-0001

The Health Unit of The East Bay Community Law Center has provided free legal assistance to individuals with HIV/AIDS since 2003 in the area of immigration law. EBCLC is a non-profit established in 1988 by students at Boalt Hall School of Law at the University of California, Berkeley to provide free legal services to low-income individuals. Since its founding in 1988, EBCLC has become the largest provider of free legal services in the East Bay and a nationally-recognized poverty law clinic of Boalt Hall. As a law school clinic, EBCLC also plays a central role in preparing and inspiring the next generation of lawyers committed to social justice.

To Whom It May Concern

The East Bay Community Law Center writes to support the Department of Health and Human Services' ("HHS") issuance of the proposed regulations to remove HIV from the list of "communicable diseases of public health significance" and to remove the HIV testing requirement from the routine medical examination of foreign nationals. This change is long overdue, and we hope that you will implement it as quickly as possible.

As an organization with a project that works specifically with HIV-positive immigrants, we have seen the real human toll that the HIV ban on travel and immigration has taken over the past two decades. The HIV ban has kept families apart, has deprived the U.S. work force of highly skilled workers, and has made it impossible for many foreign nationals to enter the U.S. as long-term non-immigrants or even short-term travelers. Individuals with families or job offers who would otherwise be eligible for lawful

permanent residence and who would be positive additions to our community are denied admission every year because of the current laws.

Section 212(a)(1)(A)(i) of the Immigration and Nationality Act ("INA") states that anyone with a "communicable disease of public health significance" is inadmissible to the United States. For 15 years, the INA specified that HIV was a ground of inadmissibility; last year Congress voted to amend the INA and restored authority to HHS to determine what diseases should be on this list.

The proposed regulation correctly recognizes that the mechanisms for transmitting HIV do not pose the same level of risk as those diseases that remain covered under the existing definition of "communicable disease of public health significance." The current state of the science understands that, unlike tuberculosis for instance, HIV cannot be spread through casual contact. Public health and medical organizations have long believed that the best way to reduce the transmission of HIV is by targeting specific risk behaviors, not by singling out groups of people, such as non-citizens, for discriminatory treatment.

Although it is possible for foreign nationals who apply for lawful permanent residence to seek a waiver of the HIV ground of inadmissibility, these waivers are difficult to obtain. To even qualify to apply for a waiver, a foreign national must have a U.S. citizen or lawful permanent resident spouse, child or parent (if the applicant is unmarried.) This means that some family members, such as parents of married sons and daughters, and U.S. citizen siblings, who are considered close enough to sponsor a foreign national for residence are not considered close enough to support an HIV waiver application.

Even if a lawful permanent resident applicant has the qualifying relative to support a waiver application, it is still often impossible to meet the requirements of the HIV waiver. For those family members abroad who are subject to consular processing, administration of the waiver process varies greatly from country to country with citizens of developing countries often asked to clear impossible hurdles, such as paying astronomical bonds. Furthermore, many foreign nationals, even those who are spouses, stepchildren, or children by adoption of U.S. citizens, find it impossible to prove to a consular officer that they have private health insurance which will be accepted in the United States because they are caught in the Catch-22 where they are unable to obtain such insurance until they are able to physically get to the United States but they cannot get here without a waiver. It is difficult to see what public health purpose keeping the spouses, stepchildren, or children by adoption of U.S. citizens out of the United States could serve.

If a foreign national does not have a qualifying relative, he or she cannot even apply for an HIV waiver. This has meant that highly skilled workers whom the Department of Labor has determined will benefit the U.S. labor market, are completely ineligible to seek a waiver and permanent residence in the U.S. These individuals are likely to be highly educated and have private health insurance through their employers, yet the HIV ban needlessly excludes them from permanent residence here.

Even when waivers have a high chance of approval, as for refugees and asylees, the lengthy and complicated process of accumulating the required documentation and applying for a waiver needlessly delays attainment of permanent residence status for individuals who cannot return to their original countries. Supporting HIV waiver applications also taxes the limited resources of the non-governmental organizations that guide refugees through the resettlement process.

We have helped many individuals complete their HIV waivers, and we fail to see how the waiver application process serves any public health purpose. We have also seen myriad problems in the administration of HIV testing as part of the routine medical examination. All too often, we hear from foreign nationals who are given positive test results without adequate counseling, or who learn of their HIV status from immigration officials rather than doctors. We support HHS's move to divorce HIV testing from the immigration process.

Likewise, the HIV ground of inadmissibility applies even to non-immigrant visa applicants. This ban has prevented countless individuals from coming to the U.S. and working in skilled jobs, enrolling as foreign students, or even coming to the U.S. as tourists. This ban has no doubt taken a toll on the U.S. economy. More significantly, however, the HIV ban has damaged the U.S. reputation as a world leader in the fight against HIV. No major HIV/AIDS conference has been held on U.S. soil in the last two decades.

We applaud HHS for these proposed regulations and ask that you finalize them as quickly as possible.

Sincerely,

East Bay Community Law Center